

\$~R-187A & 188

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 12th September, 2017

+ **MAC APPEAL NO.152/2010**

RAJESH & ORS. Appellants

Through: Mr. O.P. Mannie, Advocate

versus

RAJKUMAR & ANR. Respondents

Through: Ms. Harsh Lata for Ms. Shantha
Devi Raman, Adv. for R-2

+ **MAC APPEAL NO.158/2010**

SUNITA & ORS. Appellants

Through: Mr. O.P. Mannie, Advocate

versus

RAJKUMAR & ANR. Respondents

Through: Ms. Harsh Lata for Ms. Shantha
Devi Raman, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The claimants in two connected claim cases (suit nos.199/2009 and 198/2009) are constrained to be in appeal for the second time before this court, their claim cases invoking Section 163-A of the Motor Vehicles Act, 1988 having been dismissed, once again, by the Motor Accident Claims Tribunal (Tribunal), this time by a common

judgment dated 21.11.2009, dismissal of the said cases by earlier judgment dated 22.08.2007 having been set aside by judgment dated 13.01.2009 of this court on MACA 60/2008 and 69/2008.

2. The background facts, as pleaded in the respective claim petitions by the appellants, were that, on 19.05.2005, Ram Lal and Sanjay were travelling on the pillion of a motorcycle bearing registration no.DL-5ST-0381 allegedly driven by the first respondent / Rajkumar who is the registered owner of the said vehicle, it being concededly insured against third party risk for the period in question with the second respondent (insurer) in each of these appeals. It is stated that they were returning, after attending some marriage function and sometime around 10.30 p.m., they met with an accident in the area of Kavita Kunj Colony within the jurisdiction of police station Loni, Ghaziabad. The local police, upon learning about the fatal accident, had registered FIR (Ex.P2) which was investigated into by SI Raj Rani Sharma (PW-3), such investigation unfortunately not evincing any clarity as to the identity of the other vehicle that could be involved.

3. Given the above noted fact situation and in absence of any eye-witness account, the appellants, they being the members of the family dependent upon the respective two deceased persons, instituted accident claim cases, seeking compensation under the structured formula on the principle of no fault liability in terms of Section 163-A of the Motor Vehicles Act, 1988.

4. The claim cases were dismissed by the tribunal by earlier judgment on the ground that there was no cogent evidence to prove the involvement of the motorcycle in the accident. The said judgment was

set aside and the matter remanded to the tribunal for further inquiry including by recording of the evidence of the investigating officer of the police case.

5. In the wake of the said judgment dated 13.01.2009, the tribunal held further inquiry and thereafter considered the cases afresh, this time only to again conclude that the claimants were not entitled to any compensation for the reason it could not be ascertained as to who was driving the motorcycle at the relevant point of time.

6. It appears from the impugned judgment that the tribunal assumed that the first respondent, the registered owner of the motorcycle could not conceivably have been the driver, it only taking note of the fact that inspite of notice, he had suffered the proceedings *exparte*. No effort was made to secure his version as to the identity of the person driving. This, to say the least, was most improper.

7. The proceedings under the accident claim cases may be in the nature of civil dispute wherein liability under torts is to be determined. It may be that as a party to the claim cases, the first respondent could have chosen to appear or not to appear, participate or not to participate, defend himself or not defend himself. But then, the obligation on the part of the tribunal always is to hold an inquiry such that all requisite facts are brought to light. For such purposes, the tribunal should have felt obliged to compel the appearance of the motorcycle owner (the first respondent in these appeals) and examine him on oath to make him explain the circumstances in which the vehicle registered in his name had been found in accidental state with the dead bodies of the two victims lying around on public road in the

dead of night far away from his place of residence. If compelled to appear and testify, the facts concerning the identity of the person who was driving the motorcycle would automatically have come to light.

8. It appears that the tribunal has not exercised proper discretion and authority available to it to hold an effective inquiry into these claim cases. Such failure may lead to denial of justice.

9. For the foregoing reasons, the impugned judgment is set aside. Both the claim cases are remanded to the tribunal for further inquiry. For removal of doubts, if any, it is directed that in addition to any other evidence that the claimants may wish to lead relevant to the issues that arise, the tribunal will issue requisite process, if required even duress process, to secure the presence of the first respondent and examine him on oath to ascertain the crucial facts particularly as to the identity of the person who was driving the motorcycle at the relevant point of time and adjudicate upon the two claim cases in light of such further evidence afresh.

10. The parties are directed to appear before the tribunal for further proceedings on 10.10.2017.

11. The appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 12, 2017

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